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LAW OFFICES OF  
**LOUIS E. GITOMER, LLC.**

LOUIS E. GITOMER  
Lou@lgraillaw.com

600 BALTIMORE AVENUE, SUITE 301  
TOWSON, MARYLAND 21204-4022  
(410) 296-2250 • (202) 466-6532  
FAX (410) 332-0885

MELANIE B. YASBIN  
Melanie@lgraillaw.com  
410-296-2205

December 1, 2011

Ms. Cynthia T. Brown  
Chief of the Section of Administration, Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D. C. 20423

RE: Finance Docket No. 35564 (Sub-No. 1X), *North Carolina & Virginia Railroad Company, LLC, Chesapeake & Albemarle Railroad Division—Lease Amendment—Norfolk Southern Railway Company*

Dear Ms. Brown:

Enclosed for filing are the original and 10 copies of a Petition for Waiver of 49 C.F.R. 1150.42(c) by North Carolina & Virginia Railroad Company, LLC, Chesapeake & Albemarle Railroad Division ("NCVR"). Also enclosed is a computer diskette containing the Notice in Word and pdf format.

Please time and date stamp the additional copy of this letter and the Petition and return them with our messenger. Thank you for your assistance.

If you have any questions please call or email me.

Sincerely yours,



Louis E. Gitomer  
Attorney for North Carolina & Virginia  
Railroad Company, LLC, Chesapeake &  
Albemarle Railroad Division

Enclosures

ENTERED  
Office of Proceedings

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Part of  
Public Record

DEC 1 2011

BEFORE THE

SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35564 (Sub-No. 1)

NORTH CAROLINA & VIRGINIA RAILROAD COMPANY, LLC, CHESAPEAKE &  
ALBEMARLE RAILROAD DIVISION—LEASE AMENDMENT—  
NORFOLK SOUTHERN RAILWAY COMPANY

PETITION FOR WAIVER OF 49 C.F.R. §1150.42(e)

ENTERED  
Office of Proceedings  
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Part of  
Public Record

Scott G. Williams Esq.  
Senior Vice President & General Counsel  
RailAmerica, Inc.  
7411 Fullerton Street, Suite 300  
Jacksonville, FL 32256  
(904) 538-6329

Louis E. Gitomer, Esq.  
Law Offices of Louis E. Gitomer  
600 Baltimore Avenue  
Suite 301  
Towson, MD 21204  
(202) 466-6532  
Lou\_Gitomer@verizon.net

Attorneys for: NORTH CAROLINA &  
VIRGINIA RAILROAD COMPANY, LLC,  
CHESAPEAKE & ALBEMARLE  
RAILROAD DIVISION

Dated: December 1, 2011

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 35564 (Sub-No. 1)

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NORTH CAROLINA & VIRGINIA RAILROAD COMPANY, LLC, CHESAPEAKE &  
ALBEMARLE RAILROAD DIVISION—LEASE AMENDMENT—  
NORFOLK SOUTHERN RAILWAY COMPANY

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PETITION FOR WAIVER OF 49 C.F.R. §1150.42(e)

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North Carolina & Virginia Railroad Company, LLC, Chesapeake & Albemarle Railroad Division (“NCVR”), a Class III carrier, petitions the Surface Transportation Board (the “Board”) for a waiver of the requirements of 49 C.F.R. §1150.42(e) as it relates to the amendment of the Lease and Option to Purchase Agreement dated as of February 28, 1990, as amended (the “Original Lease”) between NCVR and Norfolk Southern Railway Company (“NSR”) covering 66 miles of railroad. The line runs between approximately milepost NS-8.0 at Chesapeake, VA, and approximately milepost NS-74.00 at Edenton, NC including related branch lines and trackage as defined in the Original Lease (the “Line”). See *Chesapeake and Albemarle Railroad Company, Inc. Lease, Acquisition, and Operation Exemption—Southern Railway Company*, ICC Finance Docket No. 31617 (ICC served April 20, 1990) (“C&A Lease”). NCVR is the successor by merger to Chesapeake & Albemarle Railroad Company, Inc.<sup>1</sup> and NSR is successor in interest to Southern Railway Company.

NCVR and NSR have entered into Amendment No. 4 to Lease and Option to Purchase

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<sup>1</sup> *RailTex, Inc., North Carolina & Virginia Railroad Company, Inc., Chesapeake and Albemarle Railroad Company, Inc., Dallas, Garland & Northeastern Railroad, Inc., Mid-Michigan*

Agreement dated as of October 6, 2011 (the "Amendment"), whereby NCVR and NSR have agreed to extend the terms of the Original Lease and to strike and render null and void all provisions relating to the option to purchase the Line included in the Original Lease.

NCVR requests a waiver of the requirements of 49 C.F.R. §1150.42(e), which requires that, in certain railroad acquisition or operation proceedings, the applicant must give 60 days' advance notice of the transaction to potentially affected employees and to the national offices of the potentially affected employees' labor unions. Because NCVR has been, and will continue to be, the exclusive freight operator over the involved lines, NCVR seeks a waiver so that the Amendment it seeks to effectuate by exemption can become effective without NCVR providing the full 60-day advance notice.

Concurrently with the filing of the petition for waiver, NCVR, a Class III rail carrier, filed a verified notice of exemption under 49 C.F.R. §1150.41, to lease and operate the Line owned by NSR. NCVR has been the exclusive freight operator over the Line since 1990, pursuant to the Original Lease. *See C&A Lease*. NCVR is in the process of posting notice of the transaction at the workplace of the employees on the affected lines, and serving the notice on the national office of the potentially affected employees' labor union (as required under 49 C.F.R. §1150.42(e)).

NCVR seeks waiver of the 60-day labor notice requirement because requiring the full 60-day notice would serve no useful purpose. No employees of NCVR or NSR will be affected by this transaction, as NCVR has been the exclusive freight carrier over the Line for a number of years and would continue to be the exclusive carrier after the proposed transaction is consummated. NCVR notes that no NSR employees have performed freight operations on the

lines and no NSR jobs will be abolished or relocated as a result of the lease of the lines. Nor will NCVR employees be affected by the lease, because NCVR would continue to provide the same service as it has since 1990. NCVR will continue to operate under the Original Lease, as amended. NCVR does not plan to hire any additional employees as a result of the transaction.

The Board has stated that:

The purpose of our notice requirements at 49 C.F.R. § 1150.42(c) is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation. The Board takes seriously the requirements of the rule, but it does not appear that the purpose behind the notice requirements will be thwarted if the requested waiver is granted in this case. [internal footnotes omitted]

*Austin Western Railroad, L.I. C.—Lease and Operation Exemption --Capital Metropolitan Transportation Authority*, Docket No. FD 35456 (STB served April 7, 2011) slip op. at 2.

No employees will be adversely affected by the waiver of the notice requirements. NCVR is currently the exclusive freight operator of the involved lines, and it will continue to operate as the exclusive freight carrier of all the lines upon consummation of the transaction. Therefore, no employees will be adversely affected by the waiving the 60-day notice period because the transaction amend the lease to extend the terms of the lease and eliminate NCVR's purchase option.

For these reasons, NCVR respectfully requests that the Board grant the waiver request.

Respectfully submitted,



Louis E. Gitomer, Esq.  
Law Offices of Louis E. Gitomer  
600 Baltimore Avenue  
Suite 301  
Towson, MD 21204  
(202) 466-6532  
Lou\_Gitomer@verizon.net

Scott G. Williams Esq.  
Senior Vice President & General Counsel  
RailAmerica, Inc.  
7411 Fullerton Street, Suite 300  
Jacksonville, FL 32256  
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Attorneys for: NORTH CAROLINA &  
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Dated: December 1, 2011